



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OAR-2009-0234; FRL-9950-31-OAR]**

**40 CFR Parts 60 and 63**

**Reconsideration on the Mercury and Air Toxics Standards (MATS) and the Utility New Source Performance Standards Startup and Shutdown Provisions; Final Action**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final action denying petitions for reconsideration.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is providing notice that it has responded to two petitions for reconsideration of the final rule titled "Reconsideration of Certain Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants (NESHAP) From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance (NSPS) for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units," published in the **Federal Register** on November 19, 2014. The Administrator denied the requests for reconsideration in separate letters to the petitioners. The letters and a document providing a full explanation of the agency's rationale for each denial is in the docket for these rules.

**DATES:** [insert date of publication in the FR].

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Eddinger, Sector

Policies and Programs Division (D243-01), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-5426; fax number: (919) 541-5450; email address: eddinger.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. How Can I Get Copies of This Document and Other Related Information?**

This **Federal Register** document, the petitions for reconsideration, the letters denying the petitions for reconsideration, and the document titled "Denial of Petitions for Reconsideration of Certain Startup/Shutdown Issues: MATS" (Reconsideration Response Document) are available in the dockets the EPA established under Docket ID No. EPA-HQ-OAR-2009-0234. The Reconsideration Response Document is available in the MATS docket by conducting a search of the title "Denial of Petitions for Reconsideration of Certain Startup/Shutdown Issues: MATS." All documents in the dockets are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available

docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center (EPA/DC), Room 3334, EPA WJC West Building, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744 and the telephone number for the Air Docket is (202) 566-1742. This **Federal Register** document and the Reconsideration Response Document denying the petitions can also be found on the EPA's Web site at <https://www.epa.gov/mats>.

## **II. Judicial Review**

Section 307(b)(1) of the Clean Air Act (CAA) indicates which Federal Courts of Appeals have venue for petitions for review of final EPA actions. This section provides, in part, that the petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit if: (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such actions are locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

The EPA's actions denying the petitions for reconsideration are nationally applicable because the underlying rules -- the

"National Emission Standards for Hazardous Air Pollutants (NESHAP) From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance (NSPS) for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units," are nationally applicable. Thus, any petitions for review of the EPA's decisions denying petitioners' requests for reconsideration must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[insert date 60 days from the date of publication in the Federal Register]**.

### **III. Description of Action**

On February 16, 2012, pursuant to sections 111 and 112 of the CAA, the EPA published the final rules titled "National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units" (77 FR 9304). The NESHAP issued pursuant to CAA section 112 is referred to as the Mercury and Air Toxics Standards (MATS), and the NSPS rule issued pursuant to CAA section 111 is referred to as the Utility NSPS. Following promulgation of the final rules, the Administrator received petitions for reconsideration of numerous

provisions of both MATS and the Utility NSPS pursuant to CAA section 307(d)(7)(B). The EPA received 20 petitions for reconsideration of the MATS rule and 3 petitions for reconsideration of the Utility NSPS.

On November 30, 2012, the EPA issued a proposed rule reconsidering certain new source limits in MATS, the requirements applicable during periods of startup and shutdown for MATS and the Utility NSPS (for the particulate matter standard only), certain definitional and monitoring issues in the Utility NSPS, and additional technical corrections to both MATS and the Utility NSPS (77 FR 71323). On April 24, 2013, the EPA issued the final action on reconsideration of the new source MATS, the definitional and monitoring provisions in the Utility NSPS, and the technical corrections in both rules (78 FR 24073). The EPA issued the final action on reconsideration of the startup and shutdown provisions in the MATS and Utility NSPS on November 19, 2014 (79 FR 68777).

The EPA received two petitions for reconsideration of the November 19, 2014, final action on reconsideration of the startup and shutdown provisions in the MATS rule. One petition was submitted by the Environmental Integrity Project, the Chesapeake Climate Action Network, and the Sierra Club, and the other was submitted by the Utility Air Regulatory Group.

CAA section 307(d)(7)(B) states that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed."

The EPA carefully reviewed the petitions for reconsideration and evaluated all issues raised to determine if they meet the CAA section 307(d)(7)(B) criteria for reconsideration. In separate letters to the petitioners, the EPA Administrator, Gina McCarthy, denied the petitions for reconsideration. The letters were accompanied by a separate Reconsideration Response Document that articulates in detail the rationale for the EPA's final responses. These documents are all available in the docket for this action.

Dated: July 29, 2016.

Gina McCarthy,  
Administrator.

[FR Doc. 2016-18684 Filed: 8/5/2016 8:45 am; Publication Date: 8/8/2016]